

21 C.J.S. Courts § 238

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Courts

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VI. Rules of Adjudication, Decisions, and Opinions

D. Opinions

§ 238. Necessity of issuing opinion

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West's Key Number Digest

West's Key Number Digest, [Courts](#) 104, 105

Some appellate courts are required to write opinions, and it may be necessary for trial courts to state the reasons for a decision to facilitate appellate review.

Some appellate courts or courts of last resort are required to issue written opinions,¹ and under particular provisions, an opinion may be required if there is a trial on the merits² or if an opinion is requested.³ There is authority, however, that provisions requiring opinions are merely directory.⁴ Although there is no general requirement that a federal appellate court's decision be accompanied by a written opinion,⁵ an opinion may be required under certain circumstances as when a local rule provides that the court may not affirm without opinion unless it determines that no error of law appears.⁶ A rule requiring decisions to be in writing does not require that the court state its reasons although doing so is the better practice.⁷

Under some statutes or rules, written opinions by appellate courts are not required if the decision merely reaffirms previous decisions, or only relates to questions of fact, or when the case decided would serve no useful purpose as a precedent.⁸ For instance, an appellate court should not issue an opinion when it sanctions a particular litigant if an opinion could reasonably be understood by lower courts and nonparties to establish a binding circuit precedent.⁹ However, when an appellate court votes against hearing a case en banc, any member of the court may be entitled, by court rule, to file a dissent regardless of whether that judge was on the original panel deciding the case.¹⁰

Apart from a statute, trial courts should enumerate the reasoning that underlies their decisions¹¹ as the absence of an opinion by a trial court may pose a substantial impediment to meaningful appellate review.¹² Furthermore, an opinion should be written, even though not required by statute, if the question is one of great public interest, importance, or difficulty.¹³

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Footnotes

1 N.M.—[State ex rel. Anaya v. Jaramillo](#), 1979-NMSC-026, 92 N.M. 617, 593 P.2d 58 (1979).

Constitutional requirement insures that courts give careful thought

Cal.—[People v. Rojas](#), 118 Cal. App. 3d 278, 174 Cal. Rptr. 91 (2d Dist. 1981).

2 Md.—[Lovering v. Lovering](#), 38 Md. App. 360, 380 A.2d 668 (1977).

3 La.—[Tappel v. Vidros](#), 379 So. 2d 886 (La. Ct. App. 4th Cir. 1980).

4 W. Va.—[State v. Smith](#), 119 W. Va. 347, 193 S.E. 573 (1937).

5 U.S.—[Furman v. U.S.](#), 720 F.2d 263 (2d Cir. 1983).

6 U.S.—[Matter of Perimeter Park Inv. Associates, Ltd.](#), 616 F.2d 150 (5th Cir. 1980).

7 Wis.—[State v. Stuart](#), 2003 WI 73, 262 Wis. 2d 620, 664 N.W.2d 82 (2003).

8 Ala.—[Impson v. State](#), 339 So. 2d 1098 (Ala. Crim. App. 1976).

Ill.—[Bradley v. Howard Hembrough Volkswagen, Inc.](#), 89 Ill. App. 3d 121, 44 Ill. Dec. 413, 411 N.E.2d 535 (4th Dist. 1980).

N.M.—[State ex rel. Anaya v. Jaramillo](#), 1979-NMSC-026, 92 N.M. 617, 593 P.2d 58 (1979).

Precedential effect of unpublished opinions, see § 231.

9 U.S.—[Kamen v. Kemper Financial Services, Inc.](#), 500 U.S. 90, 111 S. Ct. 1711, 114 L. Ed. 2d 152, 19 Fed. R. Serv. 3d 401 (1991).

10 Tex.—[O'Connor v. First Court of Appeals](#), 837 S.W.2d 94 (Tex. 1992).

11 Del.—[Husband M v. Wife D](#), 399 A.2d 847 (Del. 1979).

N.D.—[State v. Nace](#), 371 N.W.2d 129 (N.D. 1985).

12 Pa.—[Com. v. Grundza](#), 2003 PA Super 79, 819 A.2d 66 (2003).

13 Colo.—[Young v. Board of Com'rs of Park County](#), 102 Colo. 342, 79 P.2d 654 (1938).